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Prince Telecom and Local 1430, International Brotherhood of Electrical Workers, Petitioner. Case 2–RC–22988

July 31, 2006

DECISION ON REVIEW AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

On June 24, 2005, the Regional Director for Region 2 issued a Decision and Direction of Election in which she found appropriate the petitioned-for unit of all full-time and regular part-time installation and field technicians employed at the Employer's facility located at 200 South 14th Avenue, Mt. Vernon, New York.

Thereafter, pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's Decision and Direction of Election. The Employer argued that a unit limited to technicians employed at the Employer's Mt. Vernon facility was not appropriate. The Employer argued that an appropriate unit must include installation and field technicians performing services in all four of the Employer's New York metropolitan area locations. On July 20, 2005, the Board majority¹ granted the Employer's request for review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully considered the record, including the Employer's request for review, we find that the Employer has rebutted the single-facility presumption,² and that an appropriate unit must include installation and field technicians at all of the Employer's New York area facilities.

I. FACTS

A. The Employer's Organizational Structure

The Employer, which operates nationwide, installs residential cable television, telephone, and data services pursuant to contracts with large cable-providing companies. The Employer's corporate headquarters are located in New Castle, Delaware, and the Employer divides its operations into four regions: northwest, central, south-

east, and northeast. Charles Morris, a vice president of operations for the Employer, directs the northeast region where the facility at issue is located.

The regions are further subdivided into geographical "areas." The northeast region consists of five areas: Philadelphia-Baltimore, South Jersey, North Jersey,³ New York, and New England. The facility involved here is located in the New York area. The Employer designates area managers to oversee one or more particular areas. Desmond Andrews is the area manager for New York.

Within each area, the residential cable television, telephone, and data service installation work is divided into geographic units, termed "systems." Technicians who service a particular system work out of assigned facilities. However, technicians are not assigned to particular facilities, but rather to individual systems. Although some facilities house a single system, other facilities house more than one system.

The New York area currently consists of six systems: the Bronx, Mamaroneck, Brooklyn, Long Island, Rockland, and a newly developing Nassau system. These systems operate out of four facilities: Brooklyn, Long Island, Rockland, and Mt. Vernon. The Mt. Vernon facility, located roughly between the Bronx and Mamaroneck systems, houses 48 technicians: 29 for the Bronx system and 19 for the Mamaroneck system. The Brooklyn facility houses the approximately 63 technicians in the Brooklyn system and 5 technicians in the Nassau system. The Long Island facility houses the approximately 16 technicians in the Long Island system, and the Rockland facility houses the approximately 21 technicians in the Rockland system.

Each system in the New York area has one project manager who reports directly to Area Manager Andrews. Thus, there are two project managers at the Mt. Vernon facility: one for the Bronx system and one for the Mamaroneck system. Each system in the New York area also has one supervisor, except for the Brooklyn system which has five supervisors. Supervisors report both to the system project manager and to Andrews. There is one supervisor for the Bronx system and one for the Mamaroneck system.

The four New York area facilities are all located in the metropolitan New York City area. The Mt. Vernon facility is approximately 12 to 15 miles from the Brooklyn facility, 19 to 20 miles from the Rockland facility, and 43 to 45 miles from the Long Island facility. The distance

¹ Chairman Battista and Member Schaumber; Member Liebman dissenting.

² The Employer does not raise the issue of whether the single-facility presumption is applicable in this case.

³ The Regional Director inadvertently omitted the North Jersey area in his description of the Employer's northeast region.

between the Brooklyn and Long Island facilities is approximately 43 miles; the distance between the Rockland and Long Island facilities is approximately 52 miles; and the distance between the Brooklyn and Rockland facilities is approximately 39 miles.

B. Centralized Control

The Employer's Delaware corporate office houses the Employer's payroll and human resources personnel, including the Employer's human resources director. The corporate office formulates budgets for the different areas as well as the individual systems. Personnel policies are all generated in Delaware and apply by means of a personnel handbook.

Technicians at all New York area facilities have the same health and life insurance benefit options, as well as the same number of sick and vacation days. Pay levels and scales for all locations are set by the corporate office. Throughout the New York area, there are four possible levels of pay at which a technician can be hired: technicians with no prior experience are designated as level 10, and technicians coming in with prior experience are placed in levels 1 through 4, with 4 being the most experienced. Wage scales for the Bronx, Brooklyn, and Long Island systems have been set by the corporate office at a rate 15 percent higher than wage scales at the Mamaroneck and Rockland systems.

Training is centrally conducted. After initially being hired, all New York area technicians attend training sessions together at a location that is central to all New York area systems.

C. New York Area Operations

The Employer's sole account in the New York area is with Cablevision. Technicians at each of the New York area facilities perform identical cable, telephone, and data wiring residential installation work. Technicians at the four New York area facilities share the same skill level.

New York Area Manager Andrews spends an average of between 8 and 12 hours per week at each of the New York area facilities. When he is present at a facility, Andrews performs duties such as ordering tools and uniforms, handling scheduling matters, and addressing the questions and concerns of project managers, supervisors, and technicians. Andrews also maintains offices in three of the four New York area facilities: Mt. Vernon, Brooklyn, and Long Island.

Each system has a weekly meeting where technicians come together with the system's project manager and supervisor to communicate about operational procedures, equipment, and Cablevision requests. These meetings take place in the morning at each system's facility before

the technicians go out on their routes. Because the meetings for the Mamaroneck and Bronx systems take place on different days of the week, Andrews does not always attend both the Mamaroneck and Bronx systems' meetings in any given week.

From time to time, the Employer holds an open house at one of its New York area facilities for the purpose of recruiting new employees. At these events, Andrews describes the nature of the Employer's operations to prospective new hires. Then, either Andrews or a project manager at the hiring facility conducts a one-on-one interview with each applicant.⁴ In the case where an applicant is interviewed by a project manager, the project manager informs Andrews whether the project manager thinks the candidate has the "skill set" and "mind set" to do the job. If the project manager recommends that the applicant be hired, Andrews then reviews the driver's abstract and checks for a criminal history. The applicant is subsequently sent for a drug test, and is hired after passing that test.

Although pay rates are set by the corporate office, the person interviewing the individual applicant—be it Andrews or one of the project managers—determines the pay level at which to base the new hire's compensation. Andrews and the project managers make this determination in accordance with the new hire's prior experience in the field. While Andrews formally approves the starting pay rate recommended by an interviewing project manager, Andrews has never changed a starting level from the level that the interviewing project manager had suggested.

Technicians receive a wage review every 6 months for the first year, and annually every year thereafter. Wage raises are not automatic, and each system's project manager conducts a performance review on a case-by-case basis. The project manager writes a performance review in conjunction with a recommendation concerning whether to raise the technician's pay level. Andrews examines the project manager's review, and the review is ultimately signed by both Andrews and the project manager. Andrews has authority to change the review if he does not agree with the project manager's conclusions, but Andrews infrequently makes such changes.

If a technician violates company policy or otherwise commits an infraction warranting discipline, either the system project manager or supervisor consults with the

⁴ It is not clear whether open houses conducted at the Mt. Vernon facility concern both the Bronx and the Mamaroneck systems, or whether such events take place with a focus on hiring for only one of the two systems.

technician about the policy at issue and gives the technician a verbal warning. After a second infraction, the project manager or supervisor generates a written document stating that the technician had previously been spoken to about the policy violation and that a second infraction has occurred. Upon a third violation, the project manager or supervisor informs Andrews of the history of infractions and receives approval from Andrews to issue a suspension. Andrews has refused to approve suspensions in situations where the project manager or supervisor did not adequately document the infractions leading up to the suspension.

To initiate a termination, the supervisor or project manager informs Andrews of a desire to discharge a particular technician. If the project manager or supervisor presents Andrews with the requisite documentation of progressive discipline, Andrews terminates the employee himself.

With respect to the assignment of work, the Employer produces weekly schedules for Cablevision indicating which technicians at what skill levels are available to work on a given day. The Employer follows Cablevision's system of designating a numerical point value to each different job task based on the level of complexity and time involved in the task's completion. Andrews, as well as the project managers, have authority to request that Cablevision assign a specific quantity of "points" to a technician for his or her total work on a given day. Once this general schedule is presented by the Employer to Cablevision, representatives of Cablevision produce work orders assigning particular technicians to particular jobs by way of technicians' identification numbers. Each job is assigned a point value; Cablevision may or may not follow the project manager's or supervisor's requests with respect to point allocations. System project managers and supervisors go to Cablevision's facilities to pick up daily work orders. Cablevision generates 80-85 percent of the work orders at the end of the day before they are to be performed, and about 15 percent of the work orders come in overnight.

Technicians drive to the Employer's facilities in their own vehicles. Both Bronx system and Mamaroneck system technicians report each morning to a single location—the tech room—that is located within the Employer's Mt. Vernon facility. There, technicians get their daily work assignments from the project managers and supervisors, and then depart in the Employer's trucks

after ensuring that they have the equipment necessary to complete the day's jobs.⁵

Technicians are required to call their project manager or supervisor from the field after completing the day's assigned work, as project managers and supervisors might assign additional work. If the project manager or supervisor does not assign additional work, the technician returns to the facility to complete paperwork indicating the tasks that were performed that day. The technician gives the paperwork listing the completed job codes to the supervisor, who then gives the paperwork to the project manager to approve. The project manager, in turn, gives the paperwork to the facility's administrative assistant, who enters the information into a database that goes to the corporate office. Simone Williams is the sole administrative assistant for the Mt. Vernon facility. If either a Bronx or Mamaroneck system technician believes there is an error in the paperwork, the technician approaches Williams to discuss the problem and asks that the error be corrected.

Technicians turn to their system project manager to request vacation or sick days. Project managers are authorized to approve leaves of absence for periods up to 2 weeks, but Andrews must approve any request for a longer leave of absence. The system supervisor is typically responsible for reassigning an absent technician's work to another technician or routing the work back to Cablevision.

Representatives of Cablevision may request that the Employer provide additional employees to a facility in situations where some facilities receive more work than others. Cablevision directs such requests to Andrews, and Andrews asks for technicians willing to volunteer to be temporarily transferred. It appears that Andrews always receives a sufficient number of volunteers and is never required to mandate involuntary transfers. During temporary assignments, a technician first goes to the facility out of which that technician typically works in order to pick up the truck, and then drives to the transfer facility to receive the day's job sheets. When transferred to another facility, technicians attend the weekly meeting at the location of transfer. They also fill out the requisite end-of-the-day paperwork at the transfer facility before returning to their home facility to drop off their trucks. For accounting purposes, temporarily transferred technicians are paid out of the transferred facility's budget.

⁵ It is unclear whether Bronx and Mamaroneck project managers and supervisors give out work orders to all Mt. Vernon-based technicians or exclusively to technicians within their respective systems.

Andrews testified that technicians from the Mt. Vernon facility work at one of the other three New York area facilities “at least once a month” and sometimes twice a month. The Employer submitted evidence showing temporary transfers among some of its systems. Between March 6, 2005 and March 25, 2005, 10 out of the Brooklyn system’s 63 technicians were transferred to work in the Bronx system for time periods ranging from 1 day to 16 days.⁶ During the week of May 2, 2005 to May 7, 2005, 10 out of the Bronx system’s 29 technicians worked in the Brooklyn system for time periods ranging from 1 day to 4 days.⁷ From May 3, 2005 to May 14, 2005, 9 out of the Brooklyn system’s 63 technicians worked in the Long Island system for periods ranging from 1 day to 10 days.⁸ In all, 26 out of the New York area’s total complement of 148 technicians were temporarily transferred during March and May of 2005.⁹

Technicians may request permanent transfers in situations where another facility is more convenient in terms of commuting or where a technician simply prefers to work in a different system. For example, two technicians, Jeffrey Abdin and Ronald Jones, recently transferred from the Brooklyn system to the Bronx system. Andrews estimated that there had been six permanent transfers involving New York area technicians during the year prior to the hearing.

There is no bargaining history, and no labor organization seeks to represent the Mt. Vernon facility employees

on a broader basis, e.g., in a larger unit of technicians at all of the Employer’s New York area facilities.¹⁰

I. ANALYSIS

The Board has long held that a single-facility unit is “presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity.” *J & L Plate, Inc.*, 310 NLRB 429 (1993). The party opposing the single-facility unit bears the burden of rebutting the unit’s presumptive appropriateness. *Jerry’s Chevrolet, Cadillac*, 344 NLRB No. 87 (2005). To determine whether the single-facility presumption has been rebutted, the Board examines several factors, including: central control over daily operations and labor relations and the extent of local autonomy; similarity of employee skills, functions, and working conditions; degree of employee interchange; distance between the locations; and bargaining history, if any. *Id.* We find, contrary to the dissent, that the Employer has rebutted the presumption and has demonstrated that a unit of technicians at the Mt. Vernon location is not appropriate.

The Employer exhibits a high degree of administrative centralization of its labor relations policies. All human resources personnel are based at corporate headquarters in Delaware, and the Employer enforces uniform personnel policies in all of its facilities. Corporate headquarters is responsible both for formulating each system’s budget as well as for setting pay scales for technicians nationwide. The Employer offers the same benefit options, vacation days, and sick days to technicians at all its facilities.

Within the New York area, training is conducted centrally. In addition, Area Manager Andrews has substantial hands-on involvement with all the New York facilities, including the Mt. Vernon location. He has offices at most of the facilities and visits each facility on a weekly basis, at least once or twice a week for about 8-12 hours at each facility. Andrews regularly attends and interacts with the technicians at each facility’s weekly meeting. He performs some of the one-on-one applicant interviews and determines the pay level for those applicants interviewed by him. Andrews makes the hiring, suspension, and termination decisions and approves performance reviews of the technicians.

All technicians in the New York area perform the same duties and have the same skills. Technicians are as-

⁶ One Brooklyn system technician worked in the Bronx system for 16 days, two Brooklyn system technicians worked in the Bronx system for 15 days, one Brooklyn system technician worked in the Bronx system for 14 days, one Brooklyn system technician worked in the Bronx system for 10 days, one Brooklyn system technician worked in the Bronx system for 9 days, two Brooklyn system technicians worked in the Bronx system for 7 days, one Brooklyn system technician worked in the Bronx system for 3 days, and one Brooklyn system technician worked in the Bronx system for 1 day.

⁷ One Bronx system technician worked in the Brooklyn system for 4 days, three Bronx system technicians worked in the Brooklyn system for 3 days, two Bronx system technicians worked in the Brooklyn system for 2 days, and four Bronx system technicians worked in the Brooklyn system for 1 day.

⁸ Two Brooklyn system technicians worked in Long Island system for 10 days, two Brooklyn system technicians worked in the Long Island system for 9 days, one Brooklyn system technician worked in the Long Island system for 4 days, one Brooklyn system technician worked in the Long Island system for 2 days, and three Brooklyn system technicians worked in the Long Island system for 1 day.

⁹ Three of the Brooklyn system technicians who were transferred to the Bronx system in March were later transferred to the Long Island system in May.

¹⁰ The Employer’s request for review points out that there have been no unionized employees in the Employer’s system, but that there were two unsuccessful election campaigns in the New York area in 2003 and 2004, both of which involved a New York area-wide technicians unit.

signed by system rather than by facility. In finding that the Mount Vernon facility is a separate appropriate unit, our dissenting colleague puts together technicians in two different systems, i.e., Bronx and Mamaroneck. However, the Bronx system and Mamaroneck system technicians are no more closely connected to each other than they are to the rest of the Employer's New York area technicians. There is no common local supervision between the two groups. Indeed, each system has a separate supervisor as well as project manager, and the first tier of supervision that the employees in the two systems share is at the area-wide level. Nor is there evidence of functional integration between the Bronx and Mamaroneck systems. Technicians leave the premises in their work vehicles to complete their assigned jobs after reporting to the facility in the morning, and each system holds its system-wide meeting on a different day of the week.

Contrary to the dissent's contention, technicians in the Bronx and Mamaroneck systems have very few common working conditions by virtue of working out of the Mt. Vernon facility. The only evidence linking these two separate systems' technicians is that both groups pick up and drop off their vehicles in the same area, and contact the same facility administrator to complete and correct paperwork. Although they report to the same "tech" room to receive work assignments each morning, those assignments are generated by customer Cablevision, not the Employer. These few commonalities do not meaningfully connect Bronx and Mamaroneck system technicians any more closely to one another than to technicians at the other facilities in the New York area.

Concededly, the skills, functions, training, and working conditions of the Bronx and Mamaroneck systems technicians are the same. However, these terms and conditions do not differ from those of the other technicians in the New York area.

Moreover, the Employer has presented evidence of temporary and permanent transfers between the Bronx and Mamaroneck technicians, on the one hand, and technicians working out of the remaining New York area systems, on the other. That evidence illustrates that 26 out of the New York area's total complement of 148 technicians were temporarily transferred. Additionally, in the year prior to the hearing, the Employer permanently transferred two individuals into the Bronx system from other systems. That there appears to be at least some fluidity between the Employer's New York area systems thus bolsters a finding that the single-facility presumption has been rebutted. *Budget Rent a Car Systems*, 337 NLRB 884, 885 (2002) (employee contact is a key factor in determining whether different facilities are

sufficiently functionally integrated so as to merit their inclusion in a single bargaining unit).

We recognize that the Bronx and Mamaroneck system project managers and supervisors have some input relating to hiring, wage increases, discipline, and scheduling matters for their respective technicians at the Mt. Vernon facility. However, that would militate in favor of system units, not a facility unit with two systems.

There is some geographic separation among the facilities, yet the Bronx and Mamaroneck systems work out of the same Mt. Vernon facility. There is a lack of collective-bargaining history among the Employer's technicians and so this factor tips neither way.

In sum, our view is based on the administratively centralized nature of the Employer's daily operations and labor relations, the absence of a uniquely cohesive relationship between the two systems working out of the Mt. Vernon facility, the similarity of employee skills, functions, and working conditions for the Employer's technicians throughout the New York area, and the evidence of significant temporary and permanent system transfers within the Employer's New York area.

Accordingly, we find that employees at the Mt. Vernon facility do not constitute an appropriate unit. Because the Petitioner has not indicated a willingness to proceed to an election in a broader unit including installation and field technicians at all of the Employer's New York area facilities, we shall dismiss the petition.

ORDER

The petition is dismissed.

Dated, Washington, D.C. July 31, 2006

Robert J. Battista,	Chairman
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Peter C. Schaumber,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER LIEBMAN, dissenting.

The Regional Director correctly decided that the Employer failed to rebut the presumption favoring the petitioned-for, single-facility unit of technicians employed at the Employer's Mt. Vernon facility. In reaching the opposite conclusion, the majority minimizes the significance of the local autonomy that Mt. Vernon-based project managers and supervisors exert over technicians. The majority also ignores evidence of commonalities between Bronx and Mamaroneck system technicians not shared by the Employer's other New York area technicians, diminishes the importance of the geographic separation

ration between the New York area facilities, and exaggerates the weight of the Employer's evidence of technician interchange. Accordingly, I dissent.

The applicable law is well-settled. A single-facility unit is presumptively appropriate. The party opposing the single-facility unit bears the heavy burden of establishing that the unit has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. In determining whether the presumption has been rebutted, the Board examines the following factors: (1) central control over daily operations and labor relations, including extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between the locations; and (5) bargaining history, if any. *J & L Plate*, 310 NLRB 429 (1993). Though the majority correctly cites these factors, it errs in their application.

The Employer does exhibit some degree of administrative centralization of daily operations and labor relations policies. But evidence of centralized control cannot rebut the single-facility presumption where, as here, significant local-level autonomy exists. *New Britain Transportation Co.*, 330 NLRB 397, 397 (1999); *Carter Hawley Hale Stores*, 273 NLRB 621, 623 (1984). Both the Bronx and Mamaroneck systems have one project manager and one supervisor, respectively. Facility-level management is responsible for interviewing prospective new hires, recommending whether to raise technicians' pay levels, issuing oral disciplinary warnings and written disciplinary reports, requesting authorization to suspend or terminate technicians, assigning additional work to technicians if more work becomes available on a given day because of employee illness or vehicle breakdown, and approving leaves of up to 2 weeks.

The primary focus of an inquiry into local autonomy concerns the control that facility-level management exerts over employees' day-to-day working lives. The majority errs, then, in placing undue significance on the fact that the Bronx and Mamaroneck systems have separate project managers and supervisors. Contrary to the majority's argument, cases finding the single-facility presumption rebutted because of a lack of local autonomy involve the absence of separate supervision for the petitioned-for facility—not its presence. See *Trane*, 339 NLRB 866, 868 (2003) (excluded facility lacked "any separate supervision or oversight"); *Waste Management*, 331 NLRB 309 (2000) (same). The extent of local autonomy distinguishes this case.

Moreover, technicians in the Bronx and Mamaroneck systems share a number of working conditions that set them apart from other New York area technicians. Both

groups pick up their trucks in the morning at the Mt. Vernon facility, and drop off their trucks at that facility when the working day ends. Bronx as well as Mamaroneck system technicians report to the same "tech room" every morning to receive the day's work assignments. A single individual, Simone Williams, serves as facility administrative assistant for Bronx and Mamaroneck system technicians. Both groups give their paperwork to Williams at the end of the day, and contact Williams in cases where the paperwork appears in error.

Additionally, there is little evidence of substantial interchange between the Mt. Vernon-based employees and the employees working out of the Employer's other New York area facilities. The Employer's evidence of temporary transfers shows only that a few Mt. Vernon-based employees worked for a short period of time at other locations. This evidence—limited to only two isolated months—is not sufficient to overcome the single-facility presumption. See *Courier Dispatch*, 311 NLRB 728, 731 (1993) (finding that the employer failed to show sufficient employee interchange where exhibits were unclear as to "both the scope and frequency of temporary transfers and assignments" and did not allow for an "exact accounting of the total amount of work interchanged compared to the total amount of work performed").

Finally, Mt. Vernon is separated from the other New York area facilities by substantial distances ranging from 19 to 45 miles. Though the Board recently found geographic proximity to be a critical and decisive factor in *Jerry's Chevrolet, Cadillac*, 344 NLRB No. 87 (2005), slip. op. at 2, the Board appears to dismiss the distances here as constituting only "some geographic separation."

In sum, the record as a whole supports the Regional Director's finding that the Employer failed to establish that the Mt. Vernon-based technicians lack a community of interest separate from its other New York area technicians. The evidence of significant facility-level autonomy, the Employer's failure to set forth sufficient evidence of interchange, and the notable geographic distances between the Mt. Vernon and other New York area facilities demonstrate that the single-facility presumption remains unrebutted.

The possibility that a unit covering technicians at all New York area facilities may constitute an appropriate unit as well does not change the fact that the petitioned-for single-facility unit of Mt. Vernon-based technicians is an appropriate unit in this case.

Dated, Washington, D.C. July 31, 2006

Wilma B. Liebman,

Member

NATIONAL LABOR RELATIONS BOARD